HIGH COURT OF UTTARANCHAL AT NAINITAL.

Second Appeal No. 96 of 2004

U.P. Jal Nigam through Superintendent
Engineer.

……Appellant

Vs

Verendra Singh and Company through its
Partner Sri Takechand, R/o KA-45 Kavinagar
District- Gaziabad

……Respondent

Sri D.S. Patni learned counsel for the appellant.
Sri Gaurav Joshi holding brief of Sri Sunil Kumar Jain
Learned counsel for the respondent.

Dated: -21-04-2006

Hon. B.S. Verma , J.

Heard Sri D.S. Patni learned counsel for the appellant and Sri Gaurav Joshi holding brief of Sri Sunil Kumar Jain learned counsel for the respondent.

The Second appeal has been filed against the Judgment and order dated 27-8-2004 passed by Additional District Judge, Roorkee. Appeal was filed by the appellant under Section 39 of the Arbitration Act against the order passed by the Civil Judge (S.D), who made the award dated 22-2-1989 rule of the court.

At the time of argument learned counsel for the respondent has argued that the second appeal is not maintainable against the judgment and order passed under Section 39 of the Arbitration Act, 1940. The Second appeal is barred under Section 39 (2) of the Arbitration Act.

In view of the Judgment of the Apex Court reported in 1996 (2) Supreme Court Cases 132, Shyam Sunder Agarwal and Co. Vs. Union of India. The second appeal is barred under Section 39 (2) of the Arbitration Act. The revision under Section 115 of the Code of Civil Procedure is maintainable before the Hon'ble High Court, not a second appeal.

In view of the Judgment of the Apex Court, the appeal is hereby dismissed as not maintainable, hence the substantial question of law framed by this Court earlier need not to be answered.

However, liberty is given to the appellant to prefer the revision under Section 115 of the Code of Civil Procedure before this court.

The certified copied of the order/Judgment filed in a appeal be return to the appellant after retaining the photocopies of the order.

(B.S.Verma,J)

Dated: - 21-4-2006

M.K.